Lembaga Getah Malaysia v Pentadbir Tanah Daerah Hulu Langat

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–212–05 OF 2013
ZAWAWI SALLEH, HAMID SULTAN AND ABDUL RAHMAN SEBLI JJCA
15 MARCH 2016

Land Law — Acquisition of land — Compensation — Objection against compensation — Land owner filed objection at High Court against award of compensations for land and buildings — Allegations that compensations inadequate, unreasonable and below market value — High Court ordered award be maintained — Appeal against decision of High Court — Whether order made by High Court appealable — Land Acquisition Act 1960 s 40D

The appellant was the registered owner of a land which was acquired for the purpose of project Mass Rapid Transit ('the MRT'). Upon enquiry, the respondent offered the sum of RM159,211,653.12 as compensation for the land and RM6,639,282.90 for the buildings. The appellant filed an objection in Form 16N against the award of compensations for the land and the buildings as they were deemed inadequate, unreasonable and below the market value. It was the appellant's contention that the respondent had not considered the losses and damages incurred by the appellant upon such acquisition. The High Court ordered that the award be maintained. Hence, the present appeal. The respondent raised preliminary issue that the order made by the High Court was not appealable pursuant to proviso under s 40D of the Land Acquisition Act 1960 ('the Act'). However, the appellant submitted that this appeal was not against the award of compensation but rather on the issue of law on the failure of the High Court to take into account certain considerations.

Held, dismissing the appeal with costs of RM10,000:

(1) The appeal had no merits. Compensation under the Act is based on statutory parameters with provision for procedural fairness in relation to the quantum before the land administrator as well as the judge. The judge was assisted by two assessors, who, inter alia, look into the valuation report and/or any expert evidence before coming to a fair compensation. The law does not permit the appellant to challenge the award of compensation made by the High Court when the primary issue before the land administrator as well as the High Court in essence relates to compensation. This appeal in essence was an appeal against the amount of compensation (see para 10).

[Bahasa Malaysia summary

Perayu adalah pemilik berdaftar tanah yang diambil alih bagi tujuan projek Mass Rapid Transit ('MRT'). Atas siasatan, responden menawarkan wang sejumlah RM159,211,653.12 sebagai pampasan bagi tanah dan sejumlah RM6,639,282.90 bagi bangunan. Perayu memfailkan bantahan dalam Borang 16N terhadap award pampasan bagi tanah dan bangunan tersebut kerana ia dianggap tidak mencukupi, tidak munasabah dan di bawah nilai pasaran. Ia adalah hujahan perayu bahawa responden tidak mempertimbangkan kerugian dan ganti rugi yang ditanggung oleh perayu atas pengambilan sedemikian. Mahkamah Tinggi memerintah bahawa award dikekalkan. Maka, rayuan ini. Responden membangkitkan isu awalan bahawa perintah yang dibuat oleh Mahkamah Tinggi tidak boleh dirayu berikutan peruntukan di bawah s 40D Akta Pengambilan Tanah 1960 ('Akta'). Walau bagaimanapun, perayu berhujah bahawa rayuan ini bukan terhadap award pampasan tetapi lebih kepada isu undang-undang atas kegagalan Mahkamah Tinggi untuk mengambil kira pertimbangan tertentu.

Diputuskan, menolak rayuan dengan kos RM10,000:

(1) Rayuan tidak mempunyai merit. Pampasan di bawah Akta adalah berdasarkan parameter statutori dengan peruntukan bagi keadilan prosedur berkaitan kepada kuantum di hadapan pentadbir tanah dan juga hakim. Hakim dibantu oleh dua penilai yang, antara lain, melihat kepada laporan penilaian dan/atau keterangan pakar sebelum mencapai kepada pampasan adil. Undang-undang tidak membenarkan perayu mencabar award pampasan yang dibuat oleh Mahkamah Tinggi apabila isu utama di hadapan pentadbir tanah dan juga Mahkamah Tinggi pada dasarnya berkaitan kepada pampasan. Rayuan ini pada dasarnya adalah rayuan terhadap jumlah pampasan (lihat perenggan 10).]

Notes

For cases on compensation, see 8(2) *Mallal's Digest* (5th Ed, 2015) paras 2301–2355.

Cases referred to

Bertam Consolidated Runner Co Ltd v Collector of Land Revenue Province Wellesley [1984] 1 MLJ 164, FC (refd)

Calamas Sdn Bhd v Pentadbir Tanah Batang Padang [2011] 5 CLJ 125, FC (refd)

Halaman Perdana Sdn Bhd v Pentadbiran Tanah Daerah Hulu Selangor [2016] 2 MLJ 252, CA (refd)

Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal [2012] 1 MLJ 56, CA (refd)

Koriah bt Sudar v Pentadbir Tanah Kuala Langat [2013] 3 MLJ 695; [2013] 5 CLJ 571, CA (refd)

Polywell Development Sdn Bhd v Pentadbir Tanah Daerah Johor Bahru [2014] 4 MLJ 142; [2014] 5 CLJ 129, CA (refd)
Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal [2013] 6 MLJ 626; [2013] 9 CLJ 152, FC (refd)

Legislation referred to

Land Acquisition Act 1960 s 40D
National Land Code Form 16N

Appeal from: Civil Suit No 22–203 of 2001 (High Court, Shah Alam)

Nad Segaram (Soo Siew Mei with him) (Mazlan & Assoc) for the appellant.
Rafiqha Hanim Mohd Rosli (State Legal Advisor, Selangor Legal State Office) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant's appeal in relation to Land Acquisition Act 1960 ('the LAA 1960') came up for hearing on 21 April 2015 and upon hearing the respondent's preliminary objection pursuant to s 40D of the LAA 1960, and also upon considering the complaint in the memorandum of appeal and having heard the submission of the parties, we took the view that the appeal has no merits more so in the light of s 40D of the LAA 1960 and dismissed the appeal. My learned brothers Mohd Zawawi Salleh JCA and Abdul Rahman Sebli JCA have read the draft judgment and approved the same.

[2] The appellant and respondent had relied on the following cases:

(a) *Jitender Singh a/l Pagar Singh & Ors v Pentadbir Tanah Wilayah Persekutuan and another appeal* [2012] 1 MLJ 56;

(b) *Bertam Consolidated Runner Co Ltd v Collector of Land Revenue Province Wellesley* [1984] 1 MLJ 164;

(c) *Koriah bt Sudar v Pentadbir Tanah Kuala Langat* [2013] 3 MLJ 695; [2013] 5 CLJ 571;

(d) *Calamas Sdn Bhd v Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125;

(e) *Polywell Development Sdn Bhd v Pentadbir Tanah Daerah Johor Bahru* [2014] 4 MLJ 142; [2014] 5 CLJ 129;

(f) *Syed Hussain bin Syed Junid & Ors v Pentadbir Tanah Negeri Perlis and another appeal* [2013] 6 MLJ 626; [2013] 9 CLJ 152;

(g) *Halaman Perdana Sdn Bhd v Pentadbiran Tanah Daerah Hulu Selangor* [2016] 2 MLJ 252.

BRIEF FACTS

[3] The appellant was the registered owner of the land held under the title Lot 488, GRN 51782, Mukim Sg Buloh, Petaling. The land was acquired for the purpose of project Mass Rapid Transit (MRT). On 3 May 2012, upon enquiry, the respondent offered the sum of RM159,211,653.12 as compensation for the land and RM6,639,282.90 for the buildings.

[4] The appellant had filed an objection in Form 16N against the award of compensation.

[5] The appellant objected to the sum of RM159,211,653.12 as it was inadequate, unreasonable and below the market value. The appellant also objected to the sum of RM6,639,282.90 awarded for the buildings therein and other costs as it was lower than the costs actually spent for the buildings therein and had totally disregarded the current market value.

[6] It was the appellant's contention that the respondent had not considered the losses and damages incurred by the appellant upon such acquisition.

[7] The High Court's decision was based upon the valuation reports and the opinion of two valuers. Both valuers agreed that the valuation made by the government valuer was correct. The private valuer's report was in comparison to other lands located further than the land in dispute. There was no other evidence to show that the value of the land is higher than RM13.17 per sqft. The High Court ordered that the award to be maintained and costs of the two valuers for RM250 to each valuer.

[8] The memorandum of appeal reads as follows:

1. Yang Arif Hakim-Hakim Mahkamah Rayuan gagal untuk mempertimbangkan sebelum pengambilan secara paksa 112.5648 hektar daripada 244.1262 hektar Lot 488, GRN 51782, Mukim of Sungai Buloh, Daerah Petaling, Selangor Darul Ehsan ('Tanah tersebut', nilai baki tanah yang tidak diperoleh telahpun ditetapkan dalam satu keputusan Kabinet Kerajaan Malaysia).
2. Yang Arif Hakim-Hakim Mahkamah Rayuan khilaf dari segi undang-undang dan fakta kerana semasa memutuskan pampasan tambahan hanya untuk Tanah tersebut, Yang Arif Hakim-Hakim gagal mempertimbangkan:
   (a) keputusan Kabinet pada 15.10.2010 untuk menetapkan harga penjualan bagi baki tanah yang tidak diperoleh pada RM242.40 setiap meter persegi; dan

(b) Perjanjian Jual Beli bertarikh 16.8.2011 antara Aset Tanah Nasional Berhad dan Kwasa Land Sdn Bhd.

3. Yang Arif Hakim-Hakim Mahkamah Rayuan khilaf dari segi undang-undang dan fakta kerana gagal mempertimbangkan baki tanah yang tidak diperoleh adalah satu perlanggaran Artikel 8 Perlembagaan Persekutuan.

4. Yang Arif Hakim-Hakim khilaf dari segi undang-undang dan fakta kerana gagal mempertimbangkan bahawa semasa menentukan pampasan tambahan hanya untuk Tanah tersebut, pampasan seharusnya diaward pada kadar yang sama dengan tanah bersempadanan ('Tanah Bersempadanan') seperti berikut:

(a) Lot 489 (3636), Mukim Sungai Buloh, Daerah Petaling, Selangor Darul Ehsan apabila 2.0139 hektar telah diperoleh dan penilaian yang dinilai dan diaward pada 16.12.2011 adalah RM242.40 setiap meter persegi;

(b) Lot 2286 (4052), Mukim Sungai Buloh, Daerah Petaling, Selangor Darul Ehsan apabila 1.0666 hektar telah diperoleh dan penilaian yang dinilai dan diaward pada 16.12.2011 adalah RM242.40 setiap meter persegi; dan

(c) Lot 481 (4050), Bandar Petaling Jaya, Daerah Petaling, Selangor Darul Ehsan apabila 1.5607 hektar telah diperoleh dan penilaian yang dinilai dan diaward pada 16.12.2011 adalah RM242.40 setiap meter persegi semuanya dinilai berdasarkan keputusan Kabinet yang telah menetapkan harga penjualan baki tanah yang tidak diperoleh pada RM242.20 setiap meter persegi.

PRELIMINARY OBJECTION OF THE RESPONDENT

[9] During the hearing, the respondent raised preliminary issue that the order made by the High Court is not appealable pursuant to proviso under s 40D of the LAA 1960. Learned counsel for the appellant submitted that this appeal is not against the award of compensation but rather on the issue of law on the failure of the High Court to take into account the following considerations:

(a) the cabinet's decision to fix the sale price of the remaining unacquired land at RM242.40 per sqmt; and

(b) the compensation should have been awarded at the same rate as the other land reference cases in respect of three lots of land acquired for the same project.

[10] We have read the memorandum of appeal, the appeal record, the submissions of the parties as well as the preliminary objection of the respondent pursuant to s 40D of the LAA 1960 which reads as follows:

40d

(1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.

(2) Where the assessors have each arrived at a decision which differs from each other than the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.

(3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

Section 49(1) of the Act reiterated the position as follows:

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(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in suits in the High Court:

Provided that the time within which an appeal may be presented shall only be capable of enlargement by order of a Court in such special circumstances as the Court may think fit.

[11] We take the view that the appeal has no merits. Our reasons, inter alia, are as follows:

(a) compensation under the LAA 1960 is based on statutory parameters with provision for procedural fairness in relation to the quantum before the land administrator as well as the judge. In fact, the judge is assisted by two assessors, who, inter alia, look into the valuation report and/or any expert evidence before coming to a fair compensation;

(b) the law as it stands does not permit the appellant to challenge the award of compensation made by the High Court when the primary issue before the land administrator as well as the High Court in essence relates to compensation; and

(c) this appeal in essence is an appeal against the amount of compensation.

[12] For reasons stated above, we take the view that the appeal has no merits. The appeal is dismissed with costs of RM10,000. The deposit is to be refunded.

Appeal dismissed with costs of RM10,000.

Reported by Afiq Mohamad